

**Remarks**

This Response is in reply to the Office Action dated **December 27, 2007**, wherein: the Office rejected claims 38, 39, 42 – 43, and 45 under 35 U.S.C. § 102; and the Office rejected claim 46 under 35 U.S.C. § 103.

The following comments are presented in the same order and with headings corresponding to the rejections set forth in the Office Action.

**Claim Rejections—35 U.S.C. § 102**

The Office rejected claims 38, 42 – 43, and 45 under 35 U.S.C. § 102(e), alleging the same to be anticipated by U.S. Patent No. 6,190,403 to Fischell et al. (hereafter “Fischell”).

The Office also rejected claim 38 and 39 under 35 U.S.C. § 102(e), alleging the same to be anticipated by U.S. Patent No. 5,810,872 to Kanesaka et al. (hereafter “Kanesaka”).

The Fischell Reference

**Regarding Claim 38 and Those Claims Dependent Therefrom**

Fischell fails to teach or suggest all the elements of claim 38. Claim 38 was presented in order to provoke an interference with U.S. Patent No. 6,540,775 (hereafter “the ‘775 patent”). Although not copied from the ‘775 patent, claim 38 substantially corresponds to at least one of the claims of the ‘775 patent. Because claim 38 substantially corresponds to at least one of the claims of the ‘775 patent and was presented in the instant application in order to provoke an interference, and because the ‘775 patent describes the claim terms, the Office must adopt the definitions, meanings, and/or usages of the terms in claim 38 *as those terms are used in the ‘775 patent*, as will be described below.

The Office attempted to equate the limitations of claim 38 with FIG. 9 of Fischell, as shown below in the *annotated* version of FIG. 9 included in the Office Action:

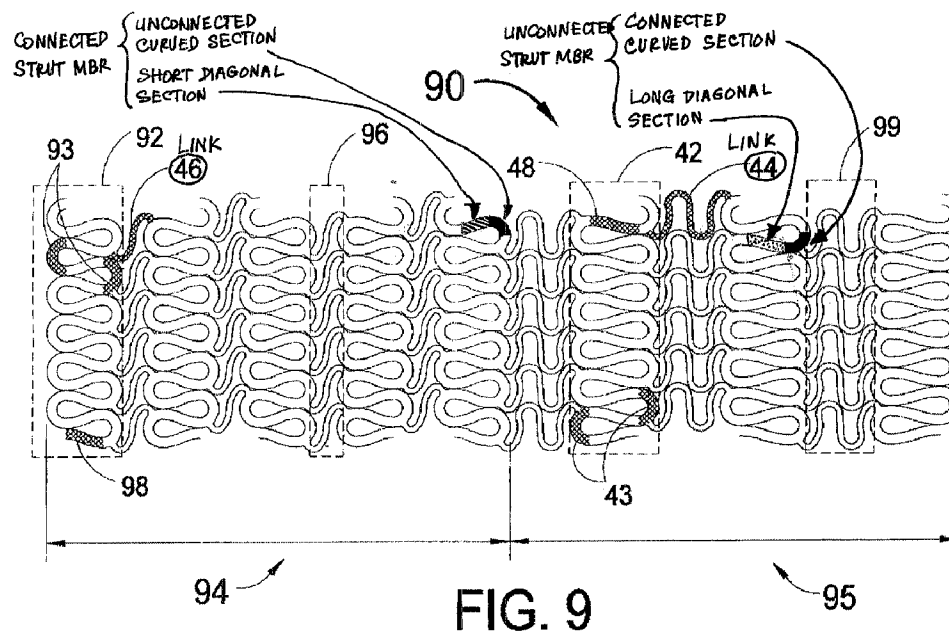


FIG. 9

However, the annotated labels added by the Office are at odds with the written description and the figures of the '775 patent, from which claim 38 substantially corresponds. FIG. 1 of the '775 patent is presented immediately below:

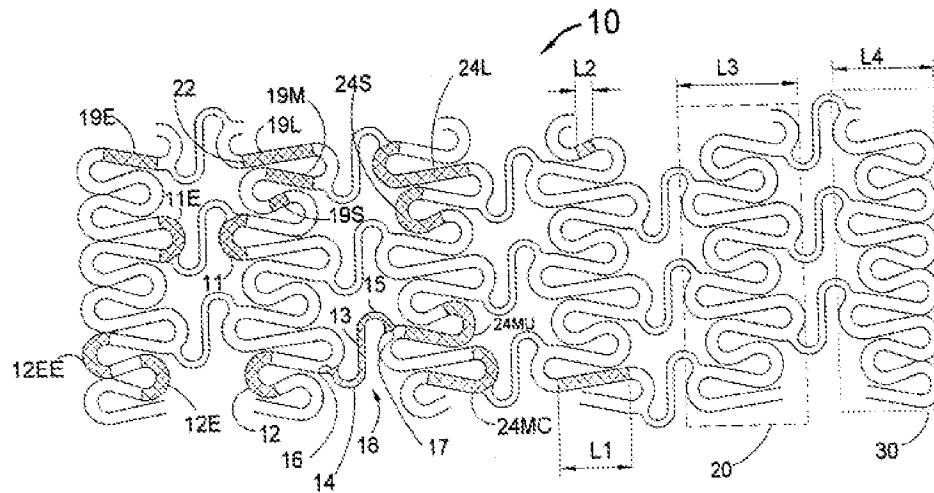


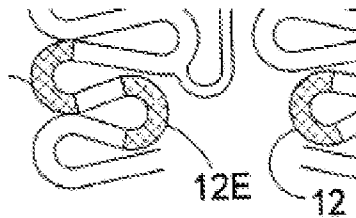
FIG. 1

The '775 patent states, "For the stent 10, the connected curved sections 11 and 11E and the unconnected curved sections 12 and 12E are shown in crosshatch in FIG. 1" (col. 4, lines 19 – 21). Upon comparing *annotated* FIG. 9 of Fischell with FIG. 1 of the '775 patent, it is clear the Office has taken a distinct, and unsupported, interpretation of the claim terms in claim 38. "When

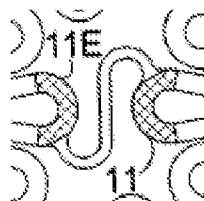
interpretation is required of a claim that is copied for interference purposes, the copied claim is viewed in the context of the patent from which it was copied.” In re Spina, 975 F.2d 854, 858, 24 USPQ2d 1142, 1145 (Fed. Cir. 1992), citing DeGeorge v. Bernier, 768 F.2d 1318, 1322, 226 USPQ 758, 761 (Fed.Cir. 1985) (if claim language is ambiguous “resort must be had to the specification of the patent from which the copied claim came”). “A claim is not interpreted one way in light of the specification in which it originally was granted, and another way in light of the specification into which it is copied as a proposed interference count.” In re Spina, 24 USPQ2d at 1145.

Therefore, because the Applicants have presented claim 38 in substantially the same form as at least one claim in the ‘775 patent in order to provoke an interference, and because the ‘775 patent describes the claim terms, the Office must adopt the definitions, meanings, and/or usages of the terms in claim 38 *as those terms are used in the ‘775 patent*.

Using the meanings of unconnected curved sections and connected curved sections as those terms are used in the ‘775 patent, it is clear that the term “unconnected curved section” means the *entire* curved end of a curved end which is not engaged to a connecting link, as shown below at 12 and 12E of FIG. 1 of the ‘775 patent,



and not an arbitrary region of the curved end, such as is asserted by the Office. Likewise, it is clear that the term “connected curved section” means the *entire* curved end of a curved end which is engaged to a connecting link, as shown below at 11 and 11E of FIG. 1 of the ‘775 patent:



Based on these term meanings, annotated FIG. 9 of Fischell does not teach or suggest at least the following limitation of claim 38: “each interior set of strut members also including at least one

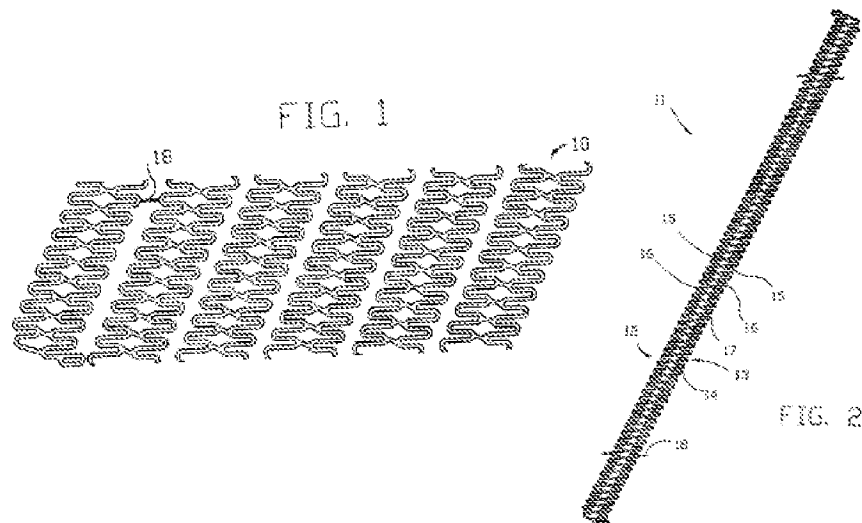
unconnected strut member consisting of a short diagonal section having a longitudinal length fixedly joined to an unconnected curved section.” FIG. 9 of Fischell does not teach the above-quoted limitation of claim 38 because, unlike claim 38, ***every curved section*** of each interior set of strut members of the stent shown in FIG. 9 ***is connected***. There are no unconnected curved sections in an interior set of strut members. As such, Fischell does not anticipate claim 38.

Claims 42 – 43 and 45 incorporate all the limitations of claim 38 and add additional limitations, making them patentable as well over Fischell. As such, claims 38, 42 – 43, and 45 are not anticipated. Applicants respectfully traverse the rejection and request that the rejection be withdrawn.

#### The Kanesaka Reference

#### **Regarding Claim 38 and 39**

Kanesaka fails to teach or suggest all the elements of claim 38. Specifically, Kanesaka fails to teach or suggest at least the limitation of “a multiplicity of interior circumferential sets of strut members,” as recited in claim 38. FIGs. 1 and 2 of Kanesaka are reproduced immediately below:



Kanesaka states, “The stent 10 is formed of a diagonally arranged strip 11 as shown in FIG. 2, which is wound spirally in a cylindrical shape.” (Emphasis added)(col. 3, lines 50 – 52). And, “The strip 11 includes two tortuous members 12, 13 connected by connecting members or joint

struts 14.” (col. 3, lines 52– 54). And, “each tortuous member extends continuously and diagonally in a waving form.” (col. 3, lines 57– 58).

Based on the above-quoted language from Kanesaka, there is no “multiplicity of interior circumferential sets of strut members,” as recited in claim 38, because there is only a single set of strut members rather than a multiplicity of sets of strut members. There is only a single set of strut members in Kanesaka because the stent 10 is made from a single strip 11 made up of two tortuous members 12, 13 which is wound to form a cylindrical shape. As such, Kanesaka does not teach or suggest all the elements of claim 38.

Claim 39 incorporates all the limitations of claim 38 and adds additional limitations making it patentable as well over Kanesaka. As such, claims 38 and 39 are not anticipated by Kanesaka. Applicants traverse the rejection and request its removal.

### **Claim Rejections—35 U.S.C. § 103**

The Office rejected claim 46 under 35 U.S.C. § 103, alleging the same to be unpatentable over Fischell in view of U.S. Patent No. 5,800,526 to Anderson et al. (hereafter “Anderson”).

The purported combination of Fischell and Anderson fails to teach or suggest all the limitations of claim 46. As argued above, Fischell fails to teach or suggest all the elements of claim 38, from which claim 46 depends. The addition of any alleged disclosure in Anderson of tantalum, as in claim 46, does nothing to address the lack of disclosure in Fischell. As such, claim 46 is non-obvious. Applicants request that the rejection be withdrawn.

**Conclusion**

In light of the above arguments, Applicants submit that the application, with pending claims 38 – 56, is in condition for allowance. Early action to that effect is solicited earnestly.

Should the Examiner have any questions regarding the above amendment, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: February 11, 2008

By:       / James L. Shands /        
James L. Shands  
Registration No.: 54439

6640 Shady Oak Dr., Suite 400  
Eden Prairie, MN 55344-7834  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001